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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Renee Armenta,

10 Plaintiff,

11 v.

12 City of Goodyear, et al.,

13 Defendants.  
14

No. CV-19-05186-PHX-ROS

**ORDER**

15 Plaintiff Renee Armenta was driving with a revoked license when she was pulled  
16 over by Defendant Matthew Ross, a police officer for the City of Goodyear. Upon being  
17 told she was under arrest, Armenta physically resisted being handcuffed. During a  
18 struggle, Ross punched Armenta in her forehead and forced her to the ground, after which  
19 he dragged her a few feet on her stomach. Armenta later filed this suit alleging Ross  
20 violated her constitutional rights and committed various state-law torts. The facts viewed  
21 in the light most favorable to Armenta do not establish a violation of her constitutional  
22 rights. Moreover, even if Armenta's constitutional rights were violated, Ross would be  
23 entitled to qualified immunity. Armenta also lacks sufficient evidence supporting her state-  
24 law claims. Accordingly, summary judgment will be granted in favor of Ross.

25 **BACKGROUND**

26 On September 6, 2018, Ross was driving a police vehicle in the parking lot of a  
27 convenience store when he noticed an individual, later identified as John Aguilar, standing  
28 in front of a silver car. According to Ross, Aguilar "had tattoos up his neck and onto his

1 face” and “[h]e was wearing a baggy T-shirt and some shorts.” (Doc. 56-1 at 10).  
2 Believing Aguilar looked “kind of out of place,” Ross concluded Aguilar “possibly” was a  
3 gang member. (Doc. 56-1 at 10). Ross ran a license plate check for the silver car. Doing  
4 so also performed a “driver’s license check of the [car’s] registered owner.” (Doc. 56-1 at  
5 12). Based on those inquiries Ross learned the car was registered to Armenta and that  
6 Armenta’s license had been revoked. (Doc. 56-1 at 13). Using the photograph on  
7 Armenta’s license, Ross concluded Armenta was in the driver’s seat. Aguilar entered the  
8 car and Armenta drove away from the convenience store.

9 Ross followed Armenta and Aguilar for a short distance before he pulled the car  
10 over based on Armenta’s “revoked license status.”<sup>1</sup> (Doc. 56-1 at 13). The next events are  
11 the entire basis of Armenta’s suit and were recorded on Ross’s body camera as well as an  
12 onlooker’s cell phone. The parties provided a side-by-side video of those two recordings  
13 which establishes the following.

14 As Ross walked up to the driver’s side of Armenta’s vehicle, Armenta had already  
15 rolled down her window. Ross said “Hello. Renee, right?” to which Armenta responded  
16 “Yeah.” Ross then ordered Armenta to “Step out of the car.” Armenta stepped out of the  
17 car and Ross said “Turn around, put your hands behind your back.” Armenta asked “What  
18 did I do?” and Ross stated “You’re under arrest.” Armenta asked “for what?” but Ross did  
19 not respond. Ross then grabbed Armenta’s left wrist to place her in handcuffs but Armenta  
20 resisted. Ross told her “Hey, get your hands out” and Armenta asked again why she was  
21 being arrested. Armenta then attempted to pull her left arm away from Ross and a struggle  
22 ensued. Armenta tried to get her arm away from Ross and sit back down in her car while  
23 Ross was attempting to prevent that by pulling Armenta away from the open car door.

24  
25 <sup>1</sup> During his deposition, Ross admitted he was not actually interested in Armenta driving  
26 without a license. Rather, Ross admitted he used the traffic stop as a “pretext[]” to speak  
27 with Aguilar. (Doc. 56-1 at 10). According to Ross, he had “profiled” Aguilar as a “gang  
28 member” and he wished to speak with Aguilar. (Doc. 56-1 at 13). It is undisputed,  
however, that Armenta was driving on a revoked license and that Ross knew that fact. In  
other words, it is undisputed there was a legally valid basis for stopping Armenta’s vehicle.  
Ross’s subjective motivation is irrelevant. *See Whren v. United States*, 517 U.S. 806, 813  
(1996) (“Subjective intentions play no role in ordinary, probable-cause Fourth Amendment  
analysis.”).

1 After approximately two seconds of pulling, Ross punched Armenta in her forehead. After  
 2 the punch, Armenta and Ross continued to struggle but Ross was able to force Armenta  
 3 onto her stomach. Ross then dragged Armenta along the ground for a few feet. At the  
 4 same time, Aguilar began exiting the passenger side of the vehicle, which prompted Ross  
 5 to pull his weapon and yell at Aguilar to “Stay in the [expletive] car!” Aguilar did not  
 6 obey. Instead, he exited the car and, after Ross shouted additional commands at him,  
 7 Aguilar lay face down on the sidewalk. Ross handcuffed Armenta, other officers arrived,  
 8 and Ross walked Armenta back to a police vehicle. Ross placed Armenta in the back seat  
 9 of the police vehicle and attempted to close the door behind her. However, Armenta’s foot  
 10 was in the door sill such that it was pinched by the closing door and the door did not close.  
 11 Armenta cried out in pain, pulled her foot inside, and Ross closed the door.

12 In August 2019, Armenta filed the current suit alleging Ross used excessive force  
 13 in violation of her rights under the Fourth Amendment and that Ross’s actions constituted  
 14 the state-law torts of battery and intentional infliction of emotional distress.<sup>2</sup> Ross now  
 15 seeks summary judgment on all claims.

### 16 ANALYSIS

17 “Summary judgment is proper where the movant shows, by citation to the record,  
 18 that there is no genuine dispute as to any material fact and the movant is entitled to  
 19 judgment as a matter of law.” *Rice v. Morehouse*, 989 F.3d 1112, 1120 (9th Cir. 2021).  
 20 Because Ross is seeking summary judgment, the Court must view the facts in the light  
 21 most favorable to Armenta. *Id.* In doing so, however, the Court need not credit Armenta’s  
 22 version of events when they are contradicted by the video recordings of the incident.<sup>3</sup> *Id.*

23 <sup>2</sup> The complaint also alleged a racial discrimination claim, an assault claim, and claims  
 24 against the City of Goodyear. None of these claims remain at issue. (Doc. 28; Doc. 53 at  
 25 1-2). In addition, Armenta’s opposition to the motion for summary judgment argues  
 26 “Defendants did not move for summary judgment as to Plaintiff’s negligence claim so the  
 argument is waived.” (Doc. 55 at 17). Armenta did not assert any negligence-based claim  
 nor does she explain what allegedly negligent actions Ross committed. Therefore, there is  
 no negligence-based claim to address.

27 <sup>3</sup> At her deposition, Armenta stated she did not resist and she never attempted to “pull back  
 28 from the police officer towards [her] car.” (Doc. 56-2 at 7). Later, however, Armenta  
 admitted she “pulled back a little.” (Doc. 56-2 at 9). The video depicts the facts as  
 recounted earlier. In particular, there can be no dispute Armenta expended significant  
 effort in pulling back and attempting to break free from Ross’s grip.

## 1           **I.       Fourth Amendment Claim**

2           “The central question in determining whether law enforcement officers violated the  
3 Fourth Amendment by using excessive force is whether the officers’ actions are objectively  
4 reasonable in light of the facts and circumstances confronting them.” *Andrews v. City of*  
5 *Henderson*, No. 20-17053, 2022 WL 1613618, at \*3 (9th Cir. May 23, 2022). This  
6 “objective reasonableness” inquiry requires an evaluation of three factors: “(1) the severity  
7 of the intrusion on the individual’s Fourth Amendment rights by evaluating the type and  
8 amount of force inflicted, (2) the government’s interest in the use of force, and (3) the  
9 balance between the gravity of the intrusion on the individual and the government’s need  
10 for that intrusion.” *Id.*

### 11           **A. Type and Amount of Force**

12           The first factor regarding the type and amount of force requires looking to “the  
13 specific factual circumstances of the case.” *Williamson v. City of Nat’l City*, 23 F.4th 1146,  
14 1152 (9th Cir. 2022). “The nature and degree of physical contact are relevant to this  
15 analysis, as are the risk of harm and the actual harm experienced.” *Id.* The Ninth Circuit  
16 often classifies instances of force into categories such as “minimal,” “intermediate,”  
17 “significant,” “substantial,” “severe,” or “deadly.” *Andrews*, 2022 WL 1613618, at \*5,  
18 *Williamson*, 23 F.4th at 1152; *Young v. Cnty. of Los Angeles*, 655 F.3d 1156, 1161 (9th Cir.  
19 2011); *Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005). These categories are not  
20 well defined, but based on existing caselaw, the actions in the present suit fall on the lower  
21 end of the spectrum.

22           Ross punched Armenta a single time in her head while struggling with her. Ross  
23 argues the punch was meant “to disrupt the biocomputer” to allow Ross to “gain a moment  
24 of advantage.” (Doc. 54-1 at 35). Armenta does not present any contrary evidence and the  
25 video shows the punch was delivered in the context of Ross and Aguilar pulling each other.  
26 Thus, the punch was meant, primarily, as an attempt to distract Armenta. At the very least,  
27 the video shows the punch was not administered to a non-resisting individual simply to  
28 inflict harm. Finally, Ross claims the punch was “not meant to injure” but a punch of the

1 sort Ross used presents some risk of harm. (Doc. 54-1 at 35). This particular punch,  
2 however, was unlikely to result in serious injury and, in fact, did not result in serious injury  
3 as Armenta suffered only a slight contusion on her forehead.

4 After forcing Armenta to the ground, Ross dragged her a few feet on her stomach.  
5 As depicted in the video, the dragging is consistent with Ross's argument that he intended  
6 to pull Armenta away from the open car door to prevent her from reentering. Ross also  
7 asserts the dragging was to bring Armenta into a position such that the car was between  
8 Armenta and Ross on the street and Aguilar still in the vehicle. Armenta does not present  
9 any contrary evidence establishing the dragging had some other purpose, such as inflicting  
10 pain. And while dragging someone presents a risk of harm, that risk is small. Armenta  
11 does not argue or present evidence that she suffered significant injuries because of the  
12 dragging.

13 Neither the punching nor the dragging presented an objectively serious risk of  
14 significant harm and both resulted in only minor injuries. *See Williamson*, 23 F.4th at 1152  
15 (finding "sprained wrist, mild swelling, and a torn rotator cuff" minor injuries). The  
16 specific factual circumstances show the punching and dragging were relatively minor uses  
17 of force.

### 18 **B. Governmental Interest**

19 The second factor when evaluating the reasonableness of force is the government's  
20 interest in the use of force. This factor requires evaluation of three subfactors: "(1) how  
21 severe the crime at issue was, (2) whether the suspect posed an immediate threat to the  
22 safety of the officers or others, and (3) whether the suspect was actively resisting arrest or  
23 attempting to evade arrest by flight." *Williamson*, 23 F.4th at 1153.

24 The crime at issue here was driving on a revoked license. That is a minor crime,  
25 meaning the government interest based on the severity of the crime was negligible. Next,  
26 there was no indication Armenta posed an immediate threat to Ross or other members of  
27 the public. She had pulled over without incident, willingly stepped out of her car, and there  
28 was no sign she had a weapon. Thus, the lack of an immediate threat means the government

1 interest in using force again was minimal.

2 The final subfactor involving resisting arrest is indisputable given the video.  
 3 Armenta initially complied with Ross's command to exit the car but she immediately began  
 4 actively resisting when told she was being arrested. *See Bryan v. MacPherson*, 630 F.3d  
 5 805, 830 (9th Cir. 2010) (distinguishing between "active" and "passive" resistance). The  
 6 video shows that, once Ross grabbed Armenta's wrist, she attempted to pull away. During  
 7 the struggle, Armenta expends significant effort in trying to break free from Ross's hold.  
 8 Once Armenta began actively resisting, Ross had little choice but to use some amount of  
 9 force. Given Armenta's active resistance, the government interest in the use of force was  
 10 substantial.

### 11 **C. Balance of Interests**

12 The third factor requires weighing the "degree of force" against "the governmental  
 13 interests at stake." *Andrews*, 2022 WL 1613618, at \*6. The degree of force used in  
 14 punching and dragging Armenta was minor while Armenta's physical resistance created a  
 15 substantial governmental interest in the use of some force. Armenta's actions put Ross in  
 16 the position of choosing between using force against her or simply allowing her to reenter  
 17 her car. It was not unreasonable for Ross to use some amount of force to prevent Armenta  
 18 from entering her car or reaching into her car. *Blankenhorn v. City of Orange*, 485 F.3d  
 19 463, 477 (9th Cir. 2007) ("Neither tackling nor punching a suspect to make an arrest  
 20 necessarily constitutes excessive force."). And it is "well-established that police officers  
 21 are not required to use the least intrusive degree of force possible." *Williamson*, 23 F.4th  
 22 at 1151. Viewed in the light most favorable to Armenta, the balance of interests does not  
 23 establish the punching and dragging were objectively unreasonable. The Fourth  
 24 Amendment claim fails.<sup>4</sup>

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25 <sup>4</sup> Armenta's argument that Ross used excessive force in shutting the car door on her foot  
 26 requires a different approach than the punching and dragging. Contrary to Armenta's  
 27 summary judgment opposition, the video of Armenta being placed in the vehicle does not  
 28 depict Ross "slamming" her foot in the door. (Doc. 55 at 2). Rather, the video shows Ross  
 guide Armenta into the vehicle and then attempt to shut the door in a calm and deliberate  
 manner. Armenta does not provide any evidence Ross knew her foot was in the door sill  
 and, based on the video, Ross could not have seen Armenta's foot would be hit by the  
 closing door. In other words, Ross shutting the door on Armenta's foot was an accident.



#### 1           **D. Qualified Immunity**

2           “Qualified immunity shields government officials . . . unless (1) they violated a  
3 federal statutory or constitutional right, and (2) the unlawfulness of their conduct was  
4 clearly established at the time.” *Rico v. Ducart*, 980 F.3d 1292, 1298 (9th Cir. 2020).  
5 While the Court has already concluded Armenta’s Fourth Amendment claim cannot satisfy  
6 the first prong, her claim also fails because she cannot satisfy the second prong. That is,  
7 even if Ross’s use of force was deemed excessive, Armenta needed to show existing  
8 precedent clearly established Ross’s actions were unlawful.<sup>5</sup> *Id.* In making this showing,  
9 Armenta needed to “identify a case where an officer acting under similar circumstances  
10 was held to have violated the Fourth Amendment.” *City of Escondido, Cal. v. Emmons*,  
11 139 S. Ct. 500, 504 (2019). The need for existing precedent to have addressed the specific  
12 situation “is especially important in the Fourth Amendment context, where . . . it is  
13 sometimes difficult for an officer to determine how the relevant legal doctrine, here  
14 excessive force, will apply to the factual situation the officer confronts.” *Id.*

15           Armenta does not cite to any existing precedent addressing a situation sufficiently  
16 similar to what Ross faced. Instead, Armenta cites to caselaw addressing strikingly  
17 different situations. For example, Armenta cites *Blankenhorn v. City of Orange*, 485 F.3d  
18 463, 470 (9th Cir. 2007). That case involved an officer punching the plaintiff but there  
19 was a dispute of fact whether the plaintiff was resisting arrest at the time of the punches.  
20 There is no dispute Armenta was resisting when she was punched. Armenta also cites  
21 *Davis v. City of Las Vegas*, 478 F.3d 1048, 1052 (9th Cir. 2007), which involved allegations  
22 an officer “slam[med] the handcuffed [plaintiff] head-first into a wall several times” and  
23 “punch[ed] him in the face while he was immobilized on the ground.” Armenta was not  
24 slammed into a wall and Armenta was punched before she was handcuffed, that punch was

25           The Fourth Amendment does not apply to such an accidental application of force. *See*,  
26 *e.g., Brower v. Cnty. of Inyo*, 489 U.S. 593, 597 (1989) (noting Fourth Amendment applies  
to officer conduct when it involves “*means intentionally applied*” and not accidents).

27           <sup>5</sup> The second prong can also be met in “the rare obvious case, where the unlawfulness of  
28 the officer’s conduct is sufficiently clear even though existing precedent does not address  
similar circumstances.” *City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 504, 202 L.  
Ed. 2d 455 (2019). The video does not depict a “rare obvious case” of patently  
unconstitutional force.

1 when Ross was attempting to gain control over her. Finally, Armenta cites *Young v. County*  
 2 *of Los Angeles*, 655 F.3d 1156 (9th Cir. 2011). That case involved allegations an officer  
 3 pepper sprayed the plaintiff without warning and then beat the plaintiff with a baton. *Id.*  
 4 at 1160. Those actions bear no resemblance to Ross's actions in this case.

5 To overcome Armenta's undisputed active resistance, Ross delivered a single punch  
 6 to Armenta's head. Once Armenta was on the ground, Ross dragged her a few feet away  
 7 from the open car door such that the car was between Ross and Aguilar. Armenta has not  
 8 cited any authority finding sufficiently similar conduct violated the Fourth Amendment.  
 9 Therefore, the second prong of the qualified immunity analysis also requires judgment in  
 10 favor of Ross on the Fourth Amendment claim.

## 11 **II. State Law Claims**

12 Armenta asserted state-law tort claims for battery and intentional infliction of  
 13 emotional distress. Armenta concedes her "battery claim is analyzed using the same  
 14 excessive force standard [as the] Fourth Amendment." (Doc. 55 at 17). Because  
 15 Armenta's Fourth Amendment claim fails, her battery claim also fails. As for the  
 16 intentional infliction of emotional distress claim, Arizona law requires the underlying  
 17 actions be "so outrageous in character and so extreme in degree, as to go beyond all  
 18 possible bounds of decency" such that they would "be regarded as atrocious and utterly  
 19 intolerable in a civilized community." *Mintz v. Bell Atl. Sys. Leasing Int'l, Inc.*, 905 P.2d  
 20 559, 563 (Ariz. Ct. App. 1995). It was not outrageous and extreme for Ross to punch and  
 21 drag Armenta in connection with her actively resisting a valid arrest, particularly because  
 22 the level of force used was constitutionally permissible. Ross is entitled to summary  
 23 judgment on both of Armenta's state-law claims.

24 Accordingly,

25 **IT IS ORDERED** the Motion for Summary Judgment (Doc. 53) is **GRANTED**.  
 26 The Clerk of Court shall enter judgment in favor of Defendants on all claims.

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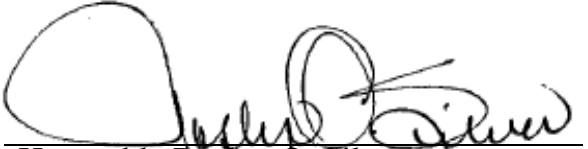
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1           **IT IS FURTHER ORDERED** the Motion for Order to Manually File (Doc. 57) is  
2 **GRANTED.**

3           Dated this 14th day of June, 2022.

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Honorable Roslyn O. Silver  
Senior United States District Judge